IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.35 OF 1997

1. Smt. Jyoti Rohidas Pereira
   alias Jyoti Rohidas
   Kankonkar, major, domestic;

2. Kumari Darshna Rohidas
   Kankonkar, represented
   by her mother
   and natural guardian
   Smt.Jyoti Rohidas
   Kankonkar, abovenamed, the
   appellant no.1;

3. Kumari Deshvini Rohidas
   Kankonkar, represented by
   her mother and natural guardian,
   the appellant no.1

   All residents of Odxel,
   Taleigao, Ilhas, Goa ... APPELLANTS

VERSUS

1. M/s. Essar Builders, a
   partnership firm having
   its office and place of
   business at Rani Pramila
   Arcade, 18 June Road,
   Panaji, Goa;

2. Shri Rajendra Narkar,
   major, married, partner
   of M/s. Essar Builders,
   C/o M/s Essar Builders, Rani
   Pramila Arcade, 18 June
   Road, Panaji-Goa;

3. Shri Sadiq Shaikh,
   major, married, partner of
   M/s Essar Builders, C/o
   M/s Essar Builders,
   Rani Pramila Arcade, 18 June
   Road, Panaji-Goa;

4. Shri Bras Pereira, since
   deceased, through his
   legal heirs:

4(a) Smt. Sukanti Shirvoikar
(daughter) major of age;

4(b) Shri Chandru Shirvoikar
(son-in-law), major of age.

both resident of Chimbel,
Goa;

4(c) Smt. Vassanti Shirvoikar
(daughter), major of age;

4(d) Shri Mahadev Shirvoikar
(son-inlaw), major of age,

both r/o Nagalim, Taleigoa,
Ilhas, Goa;

4(e) Shrimati Bras Pereira
(daughter), major of age;

4(f) Shri Sanjay Tari
(son-in-law), major of age,
both r/o Ecoxim, Bardez,Goa ...RESPONDENTS.

Mr. S.G. Dessai, Sr. Advocate with Mr. D.G. Naik and Mr. Shivan Dessai, Advocates, for the Appellants.

Mr. S.S. Kantak and Ms. G. Bhonsle, Advocates for the Respondents Nos. 1 to 3.

Mr. A. Kurdikar, Advocate for Respondents Nos.4(a) to 4(f) (absent).

CORAM : F.I. REBELLO,J.

DATED : JULY 10, 2003.

ORAL JUDGMENT

The Trial Court by the impugned Order dated 21st December 1996 has rejected the application for temporary injunction dated 25-3-1996 sought for by the Appellants herein. The

Appellant No.1 is the widow of Rohidas Pereira. Rohidas Pereira was the son of Bras Pereira, Respondent No.4,since deceased. It is the case of the Appellant No.1 that Bras Pereira gifted the entire suit property in favour of her late husband by a deed of gift. It is her further case that pursuant to the said gift deed they are the exclusive owners of the property and in these circumstances the Respondents including their father-in-law the late Respondent No.4, had no right to the property. It is not necessary to go into those various details as those will be issues in the suit. Suffice it to say that Bras Pereira himself was the son of Jose Manuel Pereira who, apart from Bras Pereira, had one more son. The property was inherited from Bras Pereira. Inventory proceedings were initiated by Bras Pereira Inventory proceedings were limited to the share of the property of Jose Pereira. It transpires that the late Respondent No.4 entered into an agreement with the Respondent No.1 for development of the said property. The late Rohidas Pereira along with the Appellant had entered into an agreement for development of the said property with one Francisco Martins.

2. The suit was filed at a stage when the

Respondents were carrying out development activity in the property pursuant to the agreement with the late Respondent No.4 and based on the power of attorney by the Respondent No.4 in their favour. An affidavit-in-reply came to be filed opposing the OAant of interim relief prayed for by the Appellants herein in terms of prayer clauses (a) and (b) in the application for temporary injunction. In answer to the same, Respondent No.3 has filed his reply wherein in paragraph 10 it was averred that after carrying out development, the developed plots had been sold to prospective buyers and in respect of some of the plots even sale deeds had been executed. A similar stand was taken in the written statement. The Trial Court for reasons given in the impugned Order refused to grant injunction.

3. Before this Court the Respondents have filed an Affidavit in Civil Application No.82 of 1997 which was t he application for interim relief sought for by the Appellants herein. In that application in paragraph 12 the area of the land developed is set out. In paragraph 13 it is set out that 33 plots were created under the said sub-division. In paragraph 14 it is set out that some of the plots have been transferred by sale

deeds. Out of the plots sold all the purchasers have been handed over possession. Possession has also been handed over with whom agreements for sale were entered into except five purchasers. The names are contained in Exhibit C. On behalf of the Appellants, their learned Counsel contends that merely because the Respondents contend that possession has been handed over, the same should not be accepted by this Court considering that there was no material placed before the Trial Court by the Respondents herein disclosing the documents which have now been placed before this Court. It is further contended that it is the Appellant No.1 and earlier, her late husband, who was in possession of the suit property. In this background it is contended that the relief as prayed for ought to be granted.

4. Having heard the learned Counsel, admittedly there has been some development on the property. The various permissions for development have been placed on record. The Appellants have prima facie made out a case disclosing their right/interest in the property if not from the gift deed at least pursuant on the death of her husband as also her father-in-law and mother-in-law. In these circumstances, the issue would be what is the

relief, that can be granted. The Respondents Nos. 1 to 3 have disclosed before the Trial Court that the property has been developed. Some plots have been sold and in respect of others, agreements for sale have been entered into. It is true that no particular details were given. However, it was open to the Appellants to call upon the Respondents to disclose the documents and if the same had not been disclosed then the Court could have drawn an adverse inference insofar as the Respondents are concerned. The stand taken by the Respondents before the Trial Court has been reiterated before this Court and names of purchasers have been disclosed. Once that be the case, it will not be possible for this Court to grant relief in respect of persons who are not parties before this Court, even accepting the case of the Appellants that in fact possession has not been handed over. That would be an issue of fact which would have been decided when all parties are present before the Court. However, at the same time the interest of the Appellants will have to be protected considering that of some plots possession has not been handed over as also sale deeds of the plots except for 5 have not been executed. In the light of that the following Order:-

(1) The Respondents Nos. 1 to 4 are directed not to create any further rights by entering into sale deeds except those already executed.

(2) The said Respondents are further directed not to give any N.O.C. or any other authority or letter either to the purchasers of the property or the persons with whom they have entered into agreement for sale till the hearing and final disposal of the suit;

(3) In respect of the five plots which have not been transferred and which are shown at items nos. 10, 17, 18 and 23 at Exhibit C, not to hand over possession till the suit is heard and finally disposed of.

(4) If there is any property left undeveloped the Respondents are direct ed not to develop the said property or create any rights thereof till the hearing and final disposal of the suit.

5. The Order of the Trial Court to that extent stands varied as set out above. There will be injunction in the terms of directions

afforested.

With the above directions the Appeal From Order is disposed of with no order as to costs.

F.I. REBELLO,J.

ac.